

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Complaint)	
of Conoco,)	UTILITY DIVISION
)	
Complainant,)	
)	DOCKET NO. 88.7.20
vs.)	
)	
Montana-Dakota Utilities Co.,)	ORDER AND RESPONSE
et al.,)	TO PETITION
)	FOR DECLARATORY RULING
Defendants.)	

Introduction

On or about July 15, 1988 the Public Service Commission (Commission) received a Complaint from Conoco, Inc. (Conoco) against Montana-Dakota Utilities Company (MDU). The Complaint involves a dispute between Conoco and MDU concerning the applicability of certain tariff provisions to service provided Conoco by MDU during the period from December 6, 1987 through March, 1988. On November 4, 1988 the Commission granted MDU an indefinite extension of time within which to file an answer or other responsive pleading. In granting the extension the Commission indicated its understanding that the parties were attempting to negotiate a settlement of the dispute which would be submitted to the Commission for its review.

On July 10, 1989 the Commission received a Petition for Declaratory Ruling from MDU, along with an agreement by MDU and Conoco to settle the dispute that produced the Complaint. The facts presented by MDU as the basis for its Petition are summarized below:

Factual Background and Questions Presented

Prior to Commission Order No. 5379 entered on November 18, 1988, there were two MDU rates for transportation of natural gas for industrial customers in Montana, Rates 82 and 97. Conoco qualified for Rate 97 because it entered into a transportation agreement with Williston Basin Interstate Pipeline Company (WBIP) under WBIP's S-2/T-3 program prior to April 1, 1985. Conoco's agreement with WBIP commenced on December 5, 1983, and contemplated a four year duration. The agreement between MDU and Conoco pursuant to Rate 97 included the billing of the first 300 mcf per day at Rate 85, MDU's industrial sales rate, and the remainder at Rate 97.

In the fall of 1987 WBIP proposed that S-2/T-3 service to Conoco be extended from December 5, 1987 to May 24, 1988. Consequently, on November 24, 1987, MDU entered into a letter agreement with Conoco to extend Rate 97 service to May 24,

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1988. On December 22, 1987 the Federal Energy Regulatory Commission (FERC) ruled that WBIP could not extend service to Conoco under the S-2/T-3 program past December 5, 1987. Conoco immediately began transportation of gas to its Billings plant under a Chevron S-2/T-3 agreement, which, since it was consummated after April 1, 1985, required Conoco to use MDU Rate 82.

Despite the FERC ruling, MDU continued to bill Conoco transportation volumes pursuant to Rate 97 (including the 300 mcf/day base volumes provision) through February of 1988. When it realized its mistake, MDU, on March 8, 1988, rebilled Conoco for transportation during the period December 6, 1987 through February, 1988, at Rate 82, retaining the 300 mcf/day base volumes billed at Rate 85. MDU threatened to terminate gas service when Conoco refused to pay the back bill. Conoco responded by paying a lesser amount and instituting a complaint proceeding at the Commission.

MDU and Conoco have entered into an agreement to settle this dispute. The effectiveness of the agreement is conditioned upon a favorable Commission ruling on this Petition. The two specific questions presented by MDU for ruling are 1) whether the settlement agreement between MDU and Conoco is just and reasonable, and 2) whether the settlement agreement is a violation of Section 69-3-305, MCA. MDU requests a declaration that the settlement is just and reasonable, and not a violation of Section 69-3-305, MCA.

Discussion

The Commission will not issue a declaratory ruling as MDU requests. The settlement agreement does not provide sufficient information for the Commission to determine whether the settlement is just and reasonable, or, to state that same issue differently, whether the settlement is a violation of 69-3-305, MCA. Section 69-3-305, MCA, reads in relevant part as follows:

Deviations from scheduled rates, tolls, and charges. (1) It shall be unlawful for any public utility to:

(a) charge, demand, collect, or receive a greater or less compensation for any utility service performed by it within the state or for any service in connection therewith than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force;

(b) demand, collect, or receive any rate, toll, or charge not specified in such schedules; or

(c) grant any rebate, concession, or special privilege to any consumer or user, which, directly or indirectly, shall or

may have the effect of changing the rates, tolls, charges, or payments.

(2) The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed, as provided in this chapter.

Thus, it is clear that a just and reasonable settlement of a billing dispute over the provision of regulated utility service is a settlement that calls for the payment of the scheduled (or tariffed) rate for the utility service provided. No settlement of such a dispute that calls for a deviation from the payment of the scheduled rate can be just and reasonable as a matter of law.

The Commission's role in a utility billing dispute is to determine what service was provided, and what rate schedule is applicable to such service. There may on occasion be a genuine dispute over matters of this kind. But once the Commission makes a determination on these issues, then a just and reasonable resolution of the billing dispute is simply a matter of multiplying the quantity of service provided by the appropriate rate.

It has been nearly 14 months since Conoco filed its complaint in this Docket. It has been more than 10 months since the Commission granted an indefinite extension of time to file a responsive pleading. To hasten the resolution of this dispute the Commission establishes the following deadline: within sixty (60) days of the service date of this order MDU will either 1) answer the complaint of Conoco (or otherwise demonstrate that the complaint has been satisfied), or 2) present another settlement agreement with Conoco that contains sufficient information for the Commission to determine whether such settlement is just and reasonable.

Conclusions of Law

1. Petitioner, Montana-Dakota Utilities Company, furnishes natural gas service to consumers in Montana, and is a "public utility" under the regulatory jurisdiction of the Montana Public Service Commission. Section 69-3-101, MCA.

2. The Commission properly exercises jurisdiction over the Petitioner's rates and operations. Section 69-3-102, MCA and Title 69, Chapter 3, Part 3, MCA.

3. The Commission may receive, process, and rule on complaints of interested persons against certain actions of public utilities. Section 69-3-321, MCA.

4. The Commission may issue declaratory rulings. Section 2-4-501, MCA.

Order

Now Therefore it is Ordered that the Commission will not rule as requested by Petitioner, Montana-Dakota Utilities Com-

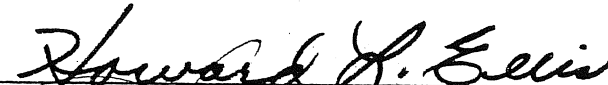
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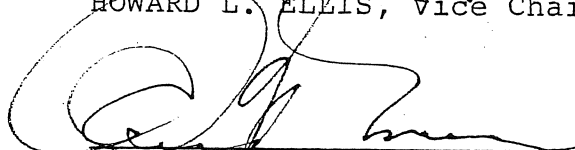
pany. MDU is directed to respond to the Commission within 60 days in conformance with this order.

Done and Dated this 11th day of September, 1989 by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION


CLYDE JARVIS, Chairman


HOWARD L. ELLIS, Vice Chairman


WALLACE W. "WALLY" MERCER, Commissioner


DANNY OBERG, Commissioner

ATTEST:



Ann Purcell
Acting Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.